

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

HAROLD L. TALBOTT
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-129
Case No. 71-9479

S.S.A. No.

The claimant appealed from Referee's Decision No. SJ-8162 which held the claimant was not entitled to benefits under section 1453(a) of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was employed for six years as a mechanical construction inspector by the Department of Water Resources, State of California. On June 5, 1971 he reached the age of 69.

On July 15, 1971 the claimant was notified by the Public Employees' Retirement System that he was subject to mandatory retirement on October 1, 1971. On September 30 he signed a separation form in which he indicated he was tendering his resignation because of "mandatory retirement." The effective date of the resignation was September 30, 1971.

The claimant attempted to establish a claim for unemployment insurance benefits effective October 17, 1971. On October 22 the San Jose Office of the Department of Human Resources Development issued a determination which denied the claimant's request to establish a claim for benefits based upon his wages as a State employee. The basis for denial was that the claimant had neither been laid off due to lack of work nor was he given a written notice of impending layoff or mandatory transfer.

On appeal the claimant contends he should be eligible to receive benefits because he did not voluntarily choose to leave employment but was required to do so by law.

REASONS FOR DECISION

Effective July 20, 1971, Ch. 353, L. 1971 was added to the Unemployment Insurance Code by enactment of Assembly Bill 271. Pertinent sections of this legislation are as follows:

"Chapter 5.5. Unemployment Compensation
for State Employees

"1451. Except as provided in this chapter, a state employee shall be eligible for unemployment compensation benefits on the same terms and conditions as are specified by this part, Part 3 (commencing with Section 3501) of this division, and Part 4 (commencing with Section 4001) of this division, for all other individuals. Except as inconsistent with the provisions of this chapter, the provisions of this division and authorized regulations shall apply to any matter arising pursuant to this chapter. A state employee shall have no rights, based on state wages, to disability benefits under this division.

* * *

"1453. As used in this chapter:

"(a) 'State employee' means an individual who has permanent or probationary civil service status in employment by this state, and who (1) receives a notice of layoff with an effective date on or after March 1, 1971, pursuant to Article 2 (commencing with Section 19530) of Chapter 8 of Part 2 of Division 5 of Title 2 of the Government Code, or (2) terminates his employment, or has terminated his employment on or after March 1, 1971, after being notified in writing by his appointing authority that he is subject to layoff or mandatory transfer in his class and location, due to a reduction in staff arising from reductions in any budget act, or any other source of funds or due to a reduction in staff for reasons of economy

or due to a reduction in staff resulting from organizational changes or reduced workload. However, nothing in this subdivision shall permit a state employee, as defined, to receive unemployment compensation benefits if he would be ineligible for or disqualified to receive such benefits under Article 1 (commencing with Section 1251) of Chapter 5 of Part 1 of Division 1."

Section 19530 of the Government Code provides as follows:

"19530. Layoff, grounds. Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interests of economy to reduce the staff of any State agency, the appointing power may lay off employees pursuant to this article and board rule."

Succeeding sections of Article 2 (sections 19531 through 19541) deal generally with the rights of laid off State employees.

Article 2 (commencing with section 20980 of Chapter 8 of Part 2 of Division 5 of Title 2 of the Government Code) deals with compulsory retirement of State employees for service.

We deem it unnecessary to resolve the question raised by the claimant as to whether his separation from employment was voluntary or involuntary. (See Pacific Maritime Association v. California Unemployment Insurance Appeals Board (1965), 45 Cal. Rptr. 892, 236 Cal. App. 2d 325, which would support an involuntary leaving of work) There is no issue before us as to the possible applicability of section 1256 of the Unemployment Insurance Code. The real issue is whether the claimant received a notice of layoff for any of the reasons enumerated in section 1453(a) of the Unemployment Insurance Code.

The claimant received a notice of mandatory retirement pursuant to the compulsory retirement for service provisions of Article 2 (commencing with section 20980 of the Government Code). He was not laid off pursuant

to Article 2 (commencing with section 19530 of the Government Code). He did not receive a notice that he was subject to layoff or mandatory transfer for any of the reasons enumerated in section 1453(a) of the Unemployment Insurance Code. Therefore, he is not eligible for unemployment insurance benefits.

DECISION

The decision of the referee is affirmed. The claimant's request to establish a claim for unemployment insurance benefits is denied.

Sacramento, California, February 17, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI